



# Department of Defense DIRECTIVE

NUMBER 1442.2

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Administrative Reissuance Incorporating Through Change 3, October 11, 1968

GC, DoD

SUBJECT: Personnel Actions Involving Civilian Attorneys

References: (a) DoD Directive 1442. 2, "Employment of Attorneys," February 5, 1963 (hereby canceled)

(b) *Federal Personnel Manual System Letter No. 302-4, August 22, 1968, issued by the U.S. Civil Service* Commission

(c) Federal Personnel Manual, Chapter 930, Subchapter 7 (Hiring Pattern for Entrance-Level Attorney Positions)

(d) Chapters 33 and 35 of title 5, USC

(e) Chapter 51 and Subchapter III of Chapter 53, title 5, USC

## 1. PURPOSE

This Directive prescribes policy and procedures for the employment, transfer, and promotion of civilian attorneys in the Department of Defense.

## 2. CANCELLATION

Reference (a) is hereby superseded and canceled.

## 3. APPLICABILITY

The provisions of this Directive apply to all DoD Components and cover those positions defined by the U.S. Civil Service Commission as attorney positions for which incumbents are required to be members of the Bar either at the time of employment or within a specified period after employment.

#### 4. POLICY

4.1. Appointments, transfers, reassignments, and promotions of attorneys within the Department of Defense will be made on the basis of merit and in conformity with chapters 33 and 35, title 5, United States Code (reference (d)) and applicable rules and regulations of the Civil Service Commission.

4.2. Recruitment of new attorneys shall be undertaken on the widest practicable basis with the highest degree of selectivity practicable for the appointment to legal positions in the Department of Defense of the best qualified candidates.

4.3. Standards and procedures with respect to the recruitment, selection, appointment, transfer, promotion, and retention of attorneys throughout the Department of Defense shall be as uniform as practicable.

#### 5. PROCEDURE FOR APPROVING PERSONNEL ACTIONS

5.1. Attorney positions generally are excepted from the competitive service and are assigned to Schedule A but are subject to chapter 51 and subchapter III of chapter 53, title 5, United States Code (reference (e)).

5.2. The disposition of all personnel actions involving appointment, transfer, reassignment or promotion of civilian attorneys, including any change from a non-attorney position to an attorney position, within the Department of Defense shall be in accordance with the procedure prescribed below.

5.2.1. The Secretary of each Military Department shall appoint one or more civilian attorneys in grades GS-15 or above who shall be designated as the qualifying authority to evaluate the qualifications of persons recommended for appointment, transfer, reassignment or promotion as attorneys and to approve or disapprove such actions. The authority vested in the so-designated qualifying authority may be redelegated to a qualified attorney or to qualified attorneys (civilian or military) in any case where circumstances warrant. The Secretary of a Military Department may assign to the qualifying authority such additional duties relating to recruitment, appointment, transfer, reassignment or promotion of attorneys as he considers appropriate.

5.2.2. The General Counsel of the Department of Defense shall be the qualifying authority for personnel actions involving attorneys not employed within the

three Military Departments. The General Counsel of the Department of Defense may delegate his authority to any qualified attorney or attorneys within the Department of Defense.

5.2.3. Depending upon his qualifications an applicant may be granted general approval or limited approval or he may be disapproved. Applicants who are granted general approval may thereafter be transferred or reassigned to any position within the grade for which approved without further approval by the qualifying authority. Applicants who are granted limited approval may not thereafter be transferred or reassigned to any other attorney position, including a transfer or reassignment proposed as a result of a reduction-in-force, without the further approval of the qualifying authority.

5.3. In addition to the forms otherwise required by the Civil Service Commission or by Departmental regulations, applicants for initial appointment or for reemployment will submit the following items.

5.3.1. An official transcript of the applicant's law school record together with an official statement of his relative standing in his class, if obtainable. In the event the applicant has been a member of the Bar for 5 years or more, the qualifying authority may waive the requirement for a transcript of his law school record and for an official statement of his relative standing in his class, provided other satisfactory evidence of his qualifications is presented in lieu thereof.

5.3.2. An official certificate showing that the applicant is a member of the Bar unless he is applying for initial appointment prior to admission to the Bar as provided in subsection 6.2., below.

5.3.3. Unless applying for initial appointment prior to admission to the Bar as provided in subsection 6.2., or unless appointed within 90 days thereafter, an official statement that his fitness to practice law or his conduct as an attorney have never been challenged. If either his fitness or conduct has been challenged, an official statement concerning the facts and circumstances together with any explanation that the applicant himself may wish to submit.

5.4. The appointing officer will submit to the qualifying authority the following items.

5.4.1. In the case of applications for initial appointment the items listed above in subsection 5.3., plus the position description for the position involved.

5.4.2. In the case of any change of position the applicable position description plus any additional items required by the qualifying authority on an individual basis.

## 6. REQUIREMENTS FOR INITIAL APPOINTMENT

6.1. To be eligible for consideration for initial appointment applicants must be graduates of a law school that is accredited by the American Bar Association. However, the qualifying authority may on a case-by-case basis grant exceptions to this requirement.

6.2. *For initial appointment in grades GS-12 and below* applicants need not have been admitted to the Bar and may, if otherwise qualified, be hired as law clerk trainees but must be admitted to the Bar within fourteen months from the date of appointment or be separated. For consideration for initial appointment *in grades above GS-12 applicants must be* members of the Bar.

6.3. Subject to the requirements of subsection 4.1., above, when more than one applicant for a particular attorney position meets the minimum requirements for appointment, the applicant who is best qualified on the basis of academic standing, relevant experience and achievement in the legal field, will be selected. Other factors involving effectiveness to perform the functions of the position may also be considered.

6.4. *The duties to be performed are the critical factor in determining entrance level. The possession of a degree or high academic standing alone is not a sufficient basis for appointment at a higher entrance level.*

6.5. Pursuant to the provisions of references (b) and (c) the following grade-level guidelines shall be applicable to initial appointment in the grades indicated:

*GS-9 Duties Performed.* Assignments involve legal or factual questions *that range from relatively simple to difficult. Some assignments at the GS-9 level may involve relatively easy research on clear-cut issues with adequate precedents. Other legal questions at the GS-9 level are difficult because of the complexity of the facts or the different possible constructions that may be placed on either the facts or laws involved. Cases are strongly contested in* formal hearings or informal negotiations by the individuals, corporations, or Agencies involved. In relation to cases of this scope, GS-9 entrance-level attorneys search case reports, legal documents, periodicals, and textbooks, and prepare tentative drafts of letters, memorandums, and legal documents

*for use by higher-grade attorneys. They assist attorneys in charge of court cases or administrative proceedings by interviewing and selecting witnesses, preparing them to give testimony, and suggesting questions to be asked in cross-examination.*

*Attorneys who enter at the GS-9 level work* under very close supervision. They receive specific preliminary instructions, their commitment authority is very limited, and their completed written work is carefully and closely reviewed.

Qualifications Required. The first professional law degree (LL. B. *or J.D.*).

GS-11 Duties Performed. Assignments involve complex and difficult legal questions requiring extensive research, analysis, and evaluation of information in *controversial areas. Cases have an important* impact on major private or public interests, for example, a major extension or revision in a State grant program or a substantial question *on civil rights. Cases are vigorously contested by capable legal talent as, for example, in an antitrust case.*

*In relation to cases of this scope, GS-11 entrance-level attorneys prepare legal documents for filing by drafting complaints, orders to show cause, indictments, preliminary motions, and supporting affidavits and briefs.*

*They prepare drafts of pleadings and motions in connection with cases in litigation. They conduct investigations to obtain facts, study legal precedents, and prepare recommendations. They assist attorneys in charge of court cases by cross-examining witnesses, and by drafting findings of fact, conclusions of law, and orders based upon the record.*

*As with attorneys described at the GS-9 level* GS-11 entrance-level attorneys work under close supervision. They receive specific preliminary instructions, their commitment authority is limited, and their completed written work is carefully reviewed.

Qualifications Required. The first professional law degree (LL. B or *J.D.*) *plus 1 year of professional legal experience; or*

the first professional law degree plus the second professional law degree (LL. M.) *provided it required 1 full academic year of graduate study; or*

*the first professional law degree provided the applicant's record shows superior law student work or activities as demonstrated by one of the following:*

- academic standing in the upper third of his law school graduating class, or*
- work or achievement of significance on his law school's official law review, or*
- special high-level honors for academic excellence in law school, or*
- winning of a moot court competition or membership on the moot court team that represents the law school in competition with other law schools, or*
- full-time or continuous participation in a legal aid program as opposed to one-shot, intermittent or casual participation, or*
- significant summer law-office clerk experience, or*
- other equivalent evidence of clearly superior achievement.*

*GS-12 Duties Performed. Assignments involve extremely complex and difficult legal questions requiring extensive research, analysis and evaluation of information in controversial areas of scientific, financial, corporate, medical, engineering, or other highly technical areas. Cases have an important impact on major private or public interests such as, for example, a major extension or revision in a State grant program or a substantial question on civil rights. Interest in these cases is usually nationwide.*

*GS-12 entrance-level attorneys are entrusted with the initial preparation of proposed solutions to projects. To this end they conduct investigations to obtain facts, study legal precedents, make recommendations and prepare necessary documents.*

*As with attorneys described at the GS-9 and GS-11 levels, GS-12 entrance-level attorneys work under close supervision. They receive preliminary instructions, their commitment authority is limited, and their completed written work is carefully reviewed.*

*Qualifications Required. The first professional law degree (LL. B. or J. D.) plus 2 years of professional legal experience (at least one of which at or equivalent to the GS-11 level); or*

*the first professional law degree plus the second professional law degree (LL. M.) plus 1 year of professional legal experience (at or equivalent to the GS-11 level); or*

*Attorneys without experience may, in unusual cases, be employed at grade GS-12, provided the individual has advanced educational attainments substantially beyond those indicated as required for work at the GS-11 level and his education clearly indicates ability to perform work of the type to be assigned, for example, education that included courses directly pertinent to the work of the Agency. The essential point in such cases is to assure that the individual's education has enabled him to step into complex legal work characteristic of the GS-12 level and to operate with the degree of independence and responsibility typical of that level.*

*Grades above GS-12*

*Qualifications Required.* *Admission to the Bar and such professional legal experience in excess of 2 years as is commensurate with the duties and responsibilities of the position to be assumed.*

6.6. The qualification requirements and grade-level guidelines set forth above shall not preclude the initial appointment of applicants at grades lower than that prescribed herein.

6.7. The qualifying authority may make exceptions to the foregoing grade-level guidelines set forth in subsection 6.5., above (but not to the basic qualification requirements set forth in subsections 6.1. through 6.3.) in those cases in which applicants possess special experience qualifications of a legal or non-legal nature that will be of material value in the performance of the duties to be performed in the position to which appointed. Such experience may have been gained either before or after admission to the Bar. In any event, professional legal experience after admission to the Bar may be substituted for the criteria of the guidelines prescribed for *appointments in grades higher than GS-9.*

## 7. REQUIREMENTS FOR PROMOTION

7.1. Each proposed promotion of a civilian attorney shall be submitted to the qualifying authority for approval or disapproval. The submission shall include an evaluation by the professional supervisor of the attorney of the quality of the attorney's work, and, if desired, an expression of opinion as to the attorney's prospective ability to perform the duties of the proposed new position.

7.2. The criteria to be used by the qualifying authorities in considering promotions will include the ability of the subject attorney to perform the duties of the

proposed new position, the quality of his performance of prior duties, and any other relevant experience.

#### 8. REQUIREMENTS FOR TRANSFER

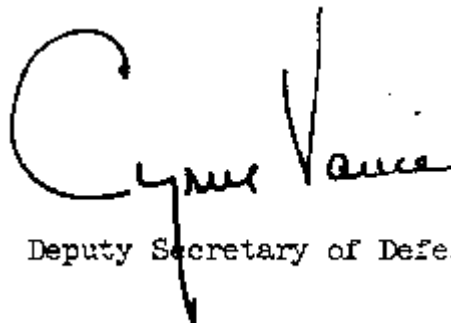
With respect to the transfer or reassignment of attorneys within grade, reference to the qualifying authorities is not necessary unless the attorney involved was granted only limited approval by the applicable qualifying authority at the time of initial appointment. When action by the qualifying authorities is not required hereunder, the attorney's losing and gaining supervisors must both consent to the proposed transfer.

#### 9. COORDINATION

The General Counsel of the Department of Defense is responsible for the coordination of the activities of qualifying authorities within the Department in order *to achieve the objectives of this Directive. Classification of individual positions is the responsibility of the appropriate civilian personnel office.*

#### 10. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Two (2) copies of each implementing document will be forwarded to the General Counsel of the Department of Defense within sixty (60) days.

  
Deputy Secretary of Defense